No. 90-1977

Supreme Court, U.S.
FILED
JUL 29 1991
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

JOHNNY DUPREE, et al.,

Appellants,

v.

MIKE MOORE, et al.,

Appellees.

On Appeal From The United States District Court For The Southern District Of Mississippi

MOTION TO DISMISS OR AFFIRM

DENNIS L. HORN
(Counsel of Record)
HORN & PAYNE
P. O. Box 1725
Jackson, MS 39215
(601) 373-0170

WILLIAM E. ANDREWS, III
P. O. Box 130
Purvis, MS 39475
(601) 794-8053

Counsel for Appellees The Lamar County Board of Education and Trustees, in Their Official Capacities, Charles L. Cameron, Rita Downs, Tommy Graham, Freddie G. Howell and Dr. Johnny R. Purvis

July 29, 1991

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

The questions are well-stated by the Appellees, Forrest County School District and Board of Trustees.

PARTIES TO PROCEEDINGS BELOW

Appellees, The Lamar County, Mississippi, Board of Education and Trustees, adopt the list of Parties to Proceedings Below as set forth in the Motion of Appellees to Dismiss or Affirm presented by Appellees the Forrest County, Mississippi, School District.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

PARTIES TO PROCEEDINGS BELOW ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

INTRODUCTION 1

STATUTES INVOLVED 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 1

ARGUMENT 3

I. The Judgment Below is Correct on Adequate and Independent State Grounds 3

II. The unique circumstances presented in this case cannot be repeated or generalized because of intervening changes in federal regulations 3

CONCLUSION 5

TABLE OF AUTHORITIES

Page

Brown v. Ohio, 432 U.S. 161 (1977) 3

Greenville Public School District, et al. v. Western Line Consolidated School District, et al. 575 So.2d 956 (Miss. 1990) 2

Morris v. Gressette 432 U.S. 491 (1977) 4

U.S.A. v. Pittman, et al. v. The State of Mississippi, et al. and Hattiesburg Public School District Civil Action, No. 4706 (S.D. Miss.) 2

Wainwright v. Goode 464 U.S. 78 (1983) 3

Woods v. Hamilton 473 F.Supp. 641 (D.S.C. 1979) 4

OTHER AUTHORITIES

28 C.F.R. Section 51.27 (1990) 4

28 C.F.R. Section 51.35 (1986) 4

INTRODUCTION

The Lamar County, Mississippi Board of Education and Trustees, joins the Motion to Dismiss or Affirm presented by the Forrest County, Mississippi, School District and Board of Trustees.

Lamar and Forrest County School Districts were granted leave to intervene in the early stages of this litigation by the Three-Judge District Court below.

STATUTES INVOLVED

The statutes and regulations involved are set forth in the Appellants' Jurisdictional Statement and the Forrest County Motion to Dismiss or Affirm.

STATEMENT OF THE CASE

The Lamar County School District adopts the summary of fact set forth by the Three-Judge Court, below, and the statement of the facts presented by the Forrest County School District.

STATEMENT OF THE FACTS

The Lamar County School District, Appellee herein, intervened below both to provide a defense to the Section 5 voting rights action and to assert defenses and counterclaims based upon Lamar County's obligations under its

existing school desegregation plan and its ability to maintain a viable school district. Its richest tax base[1] and largest population base were jeopardized by the five annexations completed and the one then being sought by the City of Hattiesburg and Plaintiffs-Appellants, members of the Hattiesburg Municipal School District. By filing this separate Section 5 action, the Hattiesburg schools had attempted to avoid entanglement in the desegregation plan, previously in litigation among these same parties, *U.S.A. v. Pittman, et al. v. The State of Mississippi, et al. and Hattiesburg Public School District*, Civil Action, No. 4706 (S.D. Miss.). Thus, the Section 5 issues here presented raised the threat of inconsistent obligations to the Lamar County School District, arising from its obligations to desegregate, to satisfy Title VI, to maintain its integrity and viability, and to educate its children.

Lamar County agrees with and adopts the facts as stated by the Court below and the Forrest County Appellees. Appellees Lamar County further agree that the Three-Judge Court did not adopt the decision of the Mississippi Supreme Court[2] because of a preclusive effect, but because it agreed with that well-reasoned opinion.

---

[1] Up to forty per cent (40%) of its tax base could be lost.

[2] *Greenville Public School District, et al. v. Western Line Consolidated School District, et al.*, 575 So.2d 956 (Miss. 1990).

ARGUMENT

I. The Judgment Below is Correct on Adequate and Independent State Grounds.

A state supreme court's interpretation of state law is binding on the federal courts. *See, Wainwright v. Goode,* 464 U.S. 78, 84 (1983) ("the views of the state's highest court with respect to state law are binding on the federal courts"); *Brown v. Ohio,* 432 U.S. 161 (1977); Decision Below, Jurisdictional Statement, App. p. 15a-16a. The Mississippi Supreme Court has interpreted Section 52 (which was precleared) of the Uniform School Law in such a way that Section 37-7-611, Miss. Code Ann. (1972) (here disputed) is repealed by implication as a matter of state law. That effect is binding on the federal courts, including a federal court making a section 5 determination.[3] The determination of the Mississippi Supreme Court based on state law therefore offers independent and adequate state grounds for the results reached by the federal court below.

II. The Unique Circumstances Presented in this Case cannot be repeated or generalized because of intervening changes in federal regulations.

When the Uniform School Law was presented for preclearance in 1986, the cover letter from the Mississippi Attorney General specified that "[t]his submission is

---

[3] The Three-Judge Court below did not decide whether 37-3-611 was precleared by implication. It held the submission of the Uniform School Law was complete in 1986, and that the United States Attorney General had interposed no objection.

cited as the 'Mississippi Uniform School Law of 1986' and is submitted to the Attorney General of the United States in its entirety." Further explanation from the Mississippi Attorney General specified that Section 52 of the Uniform School Law would become the exclusive method by which all school districts could alter their borders. The United States Attorney General did not object to this change, as recorded by his letter of August 29, 1986. Without objection, the Uniform School Law was therefore precleared in September, 1986, at the end of the sixty (60) day examination period. *Morris v. Gressette*, 432 U.S. 491 (1977); *Woods v. Hamilton*, 473 F.Supp. 641 (D.S.C. 1979) (Three-Judge Court).

At that time, the controlling regulations provided that the burden was on the United States Attorney General to request other information concerning the text of prior laws. 28 C.F.R. Section 51.35 (1986). He had not made such a request.[4] Current regulations make it the duty of the submitting party to provide the text of preexisting statutes. 28 C.F.R. Section 51.27 (1990). Given this change in the regulations, the situation in which the United States Attorney General might claim lack of information concerning repeal of prior laws cannot reoccur.

---

[4] The Mississippi Attorney General had submitted the text of prior law, including Section 37-7-611, as part of a large, black loose-leaf notebook containing the prior law and the submitted bill, juxtaposed to highlight their delineated differences, along with explanations, to contract the prior and submitted laws.

CONCLUSION

Under settled law, the Uniform School Law was precleared in its entirety when the Attorney General of the United States failed to interpose an objection to any of the provisions of the Uniform School Law of 1986.

Alternatively, the preclearance of Section 52 of the Uniform School Law, which is the controlling statute in the State of Mississippi concerning the alteration of school district boundaries, had the effect of repealing Section 37-7-611 by implication under adequate and independent state grounds.

Respectfully submitted,

DENNIS L. HORN
(Counsel of Record)
HORN & PAYNE
P. O. Box 1725
Jackson, MS 39215
(601) 373-0170

WILLIAM E. ANDREWS, III
P. O. Box 130
Purvis, MS 39475
(601) 794-8053

Counsel for Appellees The Lamar County Board of Education and Trustees, in Their Official Capacities, Charles L. Cameron, Rita Downs, Tommy Graham, Freddie G. Howell and Dr. Johnny R. Purvis

July 29, 1991